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EXAMINER

ARK, DARREN W

ART UNIT PAPER NUMBER

3643

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/820,756

Applicant(s)

BRANDT, MIKAEL

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/9/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION*****Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

**Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

1. The disclosure is objected to because of the following informalities:

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Page 3, lines 7 and 8, the phrase “obliquely on the front/upper side a smaller flap is provided” is unclear since there is no reference number to designate the flap (possibly this is discussing the angled, protruding lip no. 1 in Fig. 1?—if so it is unclear how it can be said that it is at an upper side).

Appropriate correction is required.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: no. 1 is not included in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flap resembling... a

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spinner, a butterfly or any similar additional lure must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not

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described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In regard to claim 1, the flap resembling a spinner, butterfly or any similar additional lure was not disclosed in either the specification or the figures.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, lines 1 and 2, the phrase "a wobbling plate (1) and having in its front part (2) a fixing loop (3) renders the claim vague and indefinite since the wobbling plate is also called a diving lip and does not have in a front part thereof a fixing loop. The wobbler is disclosed in the specification as comprising front (2) and rear (4) parts.

In regard to claim 1, the phrase "a flap resembling...a spinner, a butterfly..." renders the claim vague and indefinite since the flap itself is a spinner and the figures only show it as being in the form of a fish representation. See claim 3, lines 5 and 6 for a similar problem.

In regard to claim 1, lines 9 and 10, the phrase "or any similar additional lure can be fixed" renders the claim vague and indefinite since the term "or any similar additional lure" renders the claim vague and indefinite since the claimed apparatus includes

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elements not actually disclosed (those encompassed by “or any similar additional lure”) and the scope of the claim is unascertainable.

In regard to claim 2, line 1, the phrase “a wobblers” renders the claim vague and indefinite since “A two-part wobbler” was set forth in claim 1.

In regard to claim 2, line 2, the term “the loop (8) of the joint (6)” lacks positive antecedent basis.

In regard to claims 3 and 4, line 1, the phrase “A claim” renders the claim vague and indefinite since “A two-part wobbler” was set forth in claim 1.

In regard to claim 3, lines 2 and 3, the phrase “the rapid fixing hook (7) consists of a thread of the fixing loop (3)” renders the claim vague and indefinite since it does not accurately claim the relationship between the fixing loop and the rapid fixing hook.

In regard to claim 3, line 4, the term “the arm portion (10)” lacks positive antecedent basis.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Loniello 6,158,162.

Loniello discloses a wobbler (20, 30) with a wobbling plate (56) and having a front part (20) with a fixing loop (18) and a hook (28) fixed to a rear part (30), the front

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and rear parts joined by a joint (32), the fixing loop (18) connected to a rapid fixing hook (54) to which a flap (58) is fixed.

In regard to claim 2, Loniello discloses the front part (20) having a loop (26) which can be closed (26 defines the end of wire 14).

In regard to claims 3 and 4, Loniello discloses the rapid fixing hook (54) which is formed from the same wire (52) that forms part of the fixing loop (18).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loniello 6,158,162 in view of Lockhart 5,887,379.

Alternatively, Loniello discloses the loop (26) in the front part (20) which forms part of the joint that is hook-like (see Fig. 1), but does not disclose the loop in the front part forming part of the joint which is hook-like and can be retracted into the front part. Lockhart discloses a part (68) which has a loop (64, 66) that forms part of a joint with a hook (72) or other part (148) which enables both retention and the replacement of the fish hook as desired. It would have been obvious to a person of ordinary skill in the art to modify the lure of Loniello such that the loop of the front part which forms part of the joint is retractable into the front part in view of Lockhart in order to be able to change the



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front part or the rear part to which it is attached as desired yet reliably retain the rear part attached to the front part without incident.

12. Claims 1, 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart 5,189,825 in view of Rapelje 4,654,995.

Stewart discloses a wobbler (see Fig. 9) with a wobbling plate (11) and having a front part (front of 1) with a fixing loop (5) and a hook (13) fixed to a rear part (fixed to rear of 1 via 14), and the fixing loop (where 23 is attached to 24) connected to a rapid fixing hook (loop at end of 23) to which a flap (26) is fixed, but does not disclose the front and rear parts joined by a joint. Rapelje discloses front (12) and rear (18) parts joined by a joint (30). It would have been obvious to a person ordinary skill in the art at the time of the invention to modify the lure of Stewart such that the front and rear parts are joined by a joint in view of Rapelje in order to provide articulation means so as to cause the front and rear parts to move relative to each other in a realistic appearing swimming motion.

13. Claims 2, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart 5,189,825 in view of Rapelje 4,654,995 as applied to claim 1 above, and further in view of Lockhart 5,887,379 or McClellan 4,121,366 or Morris et al. 2,741,057.

Stewart and Repleje do not disclose the loop of the joint in the front part being hook-like and being capable of being retracted into the front part. Lockhart, McClellan and Morris et al. each disclose a loop (66 OR 14 OR 24) of the joint (between 68 & 72 OR between 30 & 52 OR between 10 & 28) being hook-like and being capable of being retracted into the front part (see Fig. 3 OR Figs. 1, 2 OR Fig. 2). It would have been

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obvious to a person of ordinary skill in the art to modify the joint of Stewart and Rapelje such that it has a loop which is hook-like and is capable of being retracted into the front part in view of Lockhart, McClellan or Morris et al. in order to provide which will allow articulation between the front and rear parts yet also provide a way for the user to interchange different rear parts as desired.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA